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ABSTRACT

This paper discusses the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (sections 642 and 133) and outlines some concerns with the new Immigration and Naturalization Service (INS) Quick Response Team initiative. It also examines the current relationships among local police, the INS, and local Latino communities. Cooperation between the INS and state or local police forces has thus far been restricted to incidents in which there is a clear need for coordinated activity between the INS and another law enforcement activity, but the IIRIRA represents a sweeping reform of the way undocumented immigrants found in the United States are treated under the law, greatly increasing the role of local police. The complexity of immigration law will increase the likelihood that U.S. citizens, lawful permanent residents, and lawfully abiding immigrants will be victimized because of a police officer's unfamiliarity with the law. New regulations also have the potential to compromise community trust in local law enforcement by making local officers appear to be agents of the INS. Some recommendations are made for improving the situation, including the firm suggestion that there should be no delegation of federal immigration authority to local police. The Department of Justice must ensure that the civil rights of Latinos and other ethnic minorities are protected. (SLD)

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NCLR
NATIONAL COUNCIL OF LA RAZA

ISSUE BRIEF

THE IMPACT OF IMMIGRATION ENFORCEMENT BY LOCAL POLICE ON THE CIVIL RIGHTS OF LATINOS

June 29, 1999

I. INTRODUCTION

The relationship between the Immigration and Naturalization Service (INS) and Latinos in the United States has long been one characterized by tension and fear. Latinos face the reality of being stopped by immigration enforcement agents because of their ethnicity, language, or appearance. Many encounters with immigration agents have been without probable cause, and in some instances have involved unnecessary use of force. Latinos also experience similar encounters with police officers assuming the role of – or working jointly with – INS agents. As a result, immigrants and U.S.-born Latinos lose trust in the police to ensure public safety in their neighborhoods.

Reports to NCLR of abuse and infringement of the rights of American Latinos have increased with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Incidents of abuse can be expected to occur more often as communication between local government officials and the INS increases, and especially as local police officers gain authority to enforce immigration law.

This paper discusses the provisions in IIRIRA that would increase cooperation between local officials and the INS (sections 642 and 133), and outlines some concerns with the new INS "Quick Response Team" initiative. It also examines the current relationship between local police, the INS, and local Latino communities.

II. CURRENT STATE OF LAW

The Constitution of the United States grants Congress the exclusive power to regulate the enforcement of federal laws concerning the admission of immigrants.[1] The Attorney General has been granted the authority to give this power to Immigration and Naturalization Service (INS) agents. Only agents given this power by the Attorney General have the authority and jurisdiction to enforce immigration laws. INS officers must complete immigration law and enforcement training before receiving the authority to arrest individuals for civil or criminal violations of the Immigration and Nationality Act (INA).

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[1] US. Const. art. I, § 9, cl. 1

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An INS agent must have a "reasonable cause" that can be articulated in order to interrogate any person believed to be an undocumented immigrant as to his or her right to be or to remain in the United States. The Supreme Court has ruled that the reasonable cause must not be based solely on racial heritage or ethnic appearance.[2] INS purports to train its agents to be able to detect other characteristics which may identify a person as an undocumented immigrant. Among the criteria which INS has used (and which some courts have approved) as reasonable cause for stopping a vehicle is the fact that a particular route has had previous experience with "alien traffic." Other factors have included manner of dress, hygiene, and hairstyle.[3] Used in conjunction with the ethnic appearance of an individual these factors have been justified in the courts as reasonable cause for a stop.

State and local police officers do not have authority to enforce most immigration laws. Congress has only granted local police the limited power to detain undocumented immigrants violating controlled substance statutes.[4] Besides their complete unfamiliarity with the complexity of immigration law and policies, local police officers tend to lack proper knowledge of immigration-related arrest procedures. INS agents follow different procedures for arresting immigrants than for criminal offenders, including relating different *Miranda* rights.

Cooperation between the INS and state or local police has thus far been restricted to incidents in which independent and explainable reasons clearly indicate the need for coordinated action by both the INS and another law enforcement entity.[5] An example of such a situation would be the need for local police traffic control - not including detaining suspected immigrants fleeing the scene - or a situation in which a violation of a local code would be uncovered. When INS and local police collaborate, each is supposed to remain within its legal jurisdiction. Local police may only intervene when a crime is committed or if the nature of the offense is otherwise of local interest or county concern; INS may only enforce immigration laws and laws against certain felonies.[6]

III. MAJOR NEW ENFORCEMENT PROVISIONS

IIRIRA represents a sweeping reform of the way undocumented immigrants found in the United States are treated under the law. Combined with a 179% increase over four years in funding for INS enforcement activities, these new provisions are already having a major impact on the way INS is enforcing the law. Sections 133 and 642 of IIRIRA pertain to communication and cooperation between local police or government officials and the INS.

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[2] *Brignoni-Ponce*, 422 U.S. at 884(1975), *Gonzales v. City of Peoria*, 722 F.2d 468, 474 (9th Cir. 1983), *Illinois Migrant Council v. Pilliod*, 540 F.2d 1062 (7th Cir. 1976), *Murillo v. Musegades*, 809 F. supp. 1278 (W.D. Tex. 1992) *Ramirez v. Webb*, 599 F. Supp. 1278 (W. D. Mich. 1984) *Nicacio v. United States INS*, 595 F. Supp. 19 (E.D. Wash. 1984)

[3] *Brignoni-Ponce*, 422 U.S. at 884(1975)

[4] 8 U.S.C. § 1357(d)

[5] *Florida Avocado Growers v. Paul*, 373 U.S. 132, 142

[6] William McDonald. "Crime and Illegal Immigration: Emerging Local, State, and Federal Partnerships," *National Institute of Justice Journal*. June 1997

Regulations for implementation of these provisions have yet to be issued at the time of this writing, yet the new measures are already posing problems for immigrant communities.

A. Communication Between Local Government Employees and the INS

Section 642 of IIRIRA states that notwithstanding any other provision of law – including city, county, or state ordinances – a public employee cannot be prohibited by his or her employer from reporting immigration-related information gathered during the course of his or her job to the INS. The section further outlines the obligation of the INS to respond to inquiries made by federal, state, or local government agencies to verify the citizenship or immigration status of an individual.

The legislative record shows that the aim of this provision is to eliminate city ordinances that prohibit local law enforcement officers and city employees from cooperating with the INS. The underlying reason for the emergence of such ordinances, however, was concern for public health and safety. If local government agencies are seen as a threat to a person's ability to keep his or her family intact, or to keep his or her job, then an immigrant would likely not seek needed medical care, or call the police. This is a particularly important issue for cities with large, mixed-immigrant-status communities – both legal and undocumented immigrants would have reasons to fear government employees. Police officials in such areas are concerned that immigrants and their neighbors will not report crimes to local officers performing or assisting in the duties of INS agents.

It is still unclear how this legislation will affect local ordinances. After its enactment in 1997, the City of New York filed a lawsuit against the federal government, arguing that section 642 violated the Tenth Amendment, the guarantee clause, and the principles of federalism. A federal district court judge ruled against the City on all of its motions; New York City appealed the ruling and lost.

In December 1997, well after the enactment of IIRIRA, the city of Salem, Oregon implemented an ordinance clarifying its relation to the INS. Among the provisions in the Salem ordinance is a guideline prohibiting city employees and representatives from performing duties dictated by the INS or agents of the INS. Because this ordinance was enacted after the passage of the federal legislation, it is unclear whether this ordinance can be enforced.

In July 1998, the report of a special task force on immigration issues in Austin, Texas made strong recommendations to increase public safety by dispelling fears within the immigrant community that the report of crimes to local law enforcement would result in intervention by the INS. Their recommendations included calls for less cooperation with the INS and special training for local and county officers in all policies and regulations that impact immigrants and immigration laws.

There is not much for the INS to gain from section 642. Local government employees are likely not to know the status of individuals they encounter during the course of their jobs. Even in the context of determining eligibility for welfare programs, the information needed by

a government employee does not prove that the immigrant is "unlawfully present" in the United States, but merely "not-qualified" for public benefits. Given the confusing nature of immigration laws – which offer differing levels of status – the INS will probably not be able to act on any information reported by local agency employees.

B. Acceptance of State Services to Carry Out Immigration Enforcement

- **Cooperation has a bad track record**

Immigration law has been compared to King Minos' labyrinth in ancient Crete in that it is a "baffling skein of provisions."[7] The vast complexity of immigration laws and procedures will aggravate the likelihood of incidents that victimize U.S. citizens, lawful permanent residents, and lawfully-residing immigrants simply because of a police officer's unfamiliarity with immigration law. A worksite raid in Miami last year, where several Nicaraguans (potential beneficiaries of the Nicaraguan Adjustment and Central American Relief Act of 1997) were unnecessarily detained and removed from their place of work, serves as an example of how even trained INS agents sometimes pick up the wrong people.[8]

INS agents have been allowed immense discretion in their use of appearance in formulating their reasons to stop and question a suspected undocumented immigrant. This discretion has traditionally been used in border regions; interior enforcement has not until recently been an issue for the INS. In the last few years, concurrent with the massive increase in resources available to the INS for interior enforcement, complaints of ethnically selective enforcement and INS agents' targeting individuals based solely on their ethnicity have also risen in the interior of the United States. The most blatantly discriminatory incidents, some of which are described in a later section, have involved local police officers.

Contrary to the relatively free reign that the INS previously enjoyed at the border, the courts have repeatedly circumscribed their independence where ethnicity has clearly been a factor in the execution of their functions. Using information gathered from the "I-44" forms that Border Patrol agents are advised to fill out at traffic stops, the 9th Circuit Court of Appeals in the class action *Durgin v. De La Vina* found in 1998 that the plaintiffs could in fact show a pattern and practice of Border Patrol stops made without reasonable suspicion. In 1984, a federal district court order in Michigan prohibited the Border Patrol from such stops as a violation of a person's civil rights (*Ramirez v. Webb*).

Despite these decisions, the pattern and practice of "racial profiling" continues at the hands of INS and local law enforcement agents. In Ohio, a federal district court temporarily ordered the Ohio State Highway Patrol to stop confiscating green cards from motorists being pulled over for routine traffic stops *(Farm Labor Organizing Committee v. Ohio State Highway*

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[7] *Lok v. INS. 548 F.2d 37, 38 (2d Cir. 1977).* Lynne Wilson, "The Limits of Local Police Involvement in the Enforcement of Immigration Laws," *Police Misconduct and Civil Rights Law Report*, Vol. 4, No. 16 July-August (1995)

[8] "Enforcement, Not Terror," editorial of the *Miami Herald*, 25 April 1998.

Patrol). The Ohio State Patrol had allegedly been asking about immigration status on behalf of the Border Patrol.

In April 1998, the INS had to bring a Fresno minor back from Mexico into his mother's custody after Border Patrol had arrested him, advised him to sign a voluntary departure statement, and deported him. Although INS has a policy to stay off of school grounds, Border Patrol agents came onto school grounds at the request of local police to arrest suspected gang members. Local police had already been harassing children at the school, quizzing them about their immigration status. The minor who was returned said "The cops just think that all the Mexican kids who hang out together at school are in a gang. And that's not true."[9]

INS is constantly having to explain "bad judgment calls" by its own agents. INS headquarters has had to reiterate INS policies on nondiscrimination and probable cause to its own agents twice in the last three years, and in 1998 insisted on an immediate "refresher training" of its agents.[10] Given that the INS must take greater steps to ensure that its own trained agents are following INS policies, it would be unsound to expand the potential for the misuse of INS authority by deputizing local police officers.

- **Initial attempt to delegate authority defeated in Utah**

Section 133 of IIRIRA allows the Attorney General to enter into agreements to delegate immigration powers to local police. The first implementation of section 133 was planned for Salt Lake City, Utah. The Attorney General, responding to requests for delegation of authority from the Salt Lake City County Sheriff, the Salt Lake City Police Department, and Utah Senators Orrin Hatch and Bob Bennett, began negotiations with Salt Lake officials in 1997. The purpose of negotiations was to craft a pilot "Memorandum of Understanding" (MOU) which would outline explicitly which immigration powers would be given to local police officers.[11]

Utah law enforcement agencies sought to obtain jurisdiction over immigration law, particularly because of incidents involving drugs and undocumented immigrants in their state. Utah police officers complained that whenever they had suspected undocumented immigrants in custody, the INS would not respond. (Local police cannot detain undocumented immigrants who have not committed a criminal offense.) Utah officers have expressed the desire to have the power to arrest, detain, and transport criminal undocumented immigrants to INS detention centers themselves.

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[9] Robert Rodriguez, "Teen Deported From Roosevelt High Returned To Mother," *The Fresno Bee*, 9 April 1998.
[10] "Immediate Action Directive for Worksite Enforcement Operations," Memorandum for Regional Directors, Michael A. Pearson, Executive Associate Commissioner for Field Operations, Immigration and Naturalization Service, U.S. Department of Justice, 22 May 1998.
[11] The Salt Lake City Memorandum of Understanding was imminent at the time of the first writing of this brief in July, 1998. After evaluating the pilot, the Department of Justice was expected to propose a regulation, explaining how other local police departments could pursue delegation of authority; with a 60-day public comment period to follow. Since the MOU was not passed by a vote of the City Council, the regulation was never proposed.

Representatives of local community organizations have, for a long time, objected to such measures, concerned that officers with newly-gained search and seizure powers might violate civil rights. An incident in April 1997 -- in which 75 heavily-armed Salt Lake City local, federal, and state law enforcement agents shot out an unlocked door of a local Mexican bakery in a purported search for illegal drugs and weapons-dealing - gave these organizations good cause to be wary of police enforcement of immigration laws. Only one drug arrest was made, and that charge was dismissed in court. Many community representatives believe that the "drug search" was justified by the flimsiest of evidence as a pretext to carry out an immigration raid. A number of individuals reported abuse by police officers as they were ordered on the floor and handcuffed. A secretary was dragged to the floor by her hair, while the business owner was kicked in the back when he attempted to ask the officers what was happening. The owner's six-year-old son had a rifle pointed his head by officers present.[12]

In Salt Lake City, community concerns over incidents like this one outweighed the cries for increased efficiency in local law enforcement. During a 1998 public hearing, the City Council listened to 70 speakers, most of them Latinos who opposed the delegation of immigration authority to local police officers. Although not consulted early in the debate, the Latino community was ultimately able to defeat the measure by the strength of its testimonies. Concerned that such flagrant civil rights abuses could become more frequent, the City Council voted to reject the MOU that would have cross-deputized local officers as INS agents.

- **Delegation of authority is still an issue in Iowa**

Its efforts thus blocked in Utah, the INS is now looking toward Iowa to test the pilot project. Law enforcement officials in Sioux City, uninterested in performing the duties of INS agents in addition to their own, have flatly rejected the proposal. Yet the voluntary program does maintain some local support. Lon Walker, Police Chief of Marshalltown, has emerged as one strong advocate of the MOU for his small town.

Echoing the same concerns that law enforcement officers cited in Utah, Walker hopes that the program will stem the tide of illegal drugs coming into town. He and fellow supporters have noted that, in Marshalltown, the MOU is likely to delegate very limited authority to local police. Dismissing concerns that the MOU would create more opportunities for civil rights violations, Councilman Keith Christensen stated that "the pilot program . . . is in fact focused on individuals already in custody."[13] Others have argued that the MOU could be used to ensure more proper enforcement of immigration law across the nation. They believe that the MOU may act as a means to prevent civil rights violations by officers not covered by an MOU. Officers attempting to enforce immigration laws who lack the training under an existing MOU would become easier to identify, issue complaints against, and possibly even make subject to charges.

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[12] Jim Woolf, " Police Raid Turns Businessman's American Dream Into Nightmare," *The Salt Lake Tribune*, 18 May 1997: B1

[13] Mike Sherry, "Iowa Town Considers INS Powers for Police," *The Omaha World-Herald*, 10 March, 1999.

More likely, civil rights abuses will continue to occur unchecked in jurisdictions without MOUs and, in areas with an MOU, a new obstacle will be placed in the way of victims who are trying to seek remedy for violations occurring under the guise of local police acting on behalf of the U.S. Department of Justice. The obvious zeal that Walker has expressed in catching undocumented immigrants is a serious cause for concern in the Latino community. While testifying before the Senate Immigration Subcommittee that "it's time for the illegal to be illegal," Walker said little about the implementation of necessary safeguards to protect civil rights of both the documented and the undocumented in his proposed campaign.[14] The debate on this issue is far from over.

C. Interior Enforcement Policy to Increase INS Presence in Key States

Congress granted an additional $21.8 million in appropriations to the INS for FY1999 to extend its presence in states which have seen a notable growth in the immigrant population in recent years. The INS plans to deploy 200 new agents in 45 "Quick Response Teams" (QRTs) to be distributed among 11 states -- Arkansas, Colorado, Georgia, Iowa Kentucky, Louisiana, Missouri, North Carolina, Nebraska, South Carolina, Tennessee, and Utah. The teams are scheduled for deployment on September 1 of this year. INS announced the plan while rolling out its comprehensive interior enforcement initiative, although the idea for the QRTs came from the House Appropriations Committee.

As stated by the INS, these "actions are part of the agency's effort to strengthen enforcement in the interior of the United States, and expand cooperation with state and local law enforcement agencies."[15] With a definite focus on crime, the INS has stated its goals of the new enforcement strategy to be the removal of criminal aliens, the disruption of alien smuggling operations, the minimization of document fraud, and the prevention of employer access to undocumented workers. Working with local authorities to prevent immigrant-related crime in the community, the QRTs would apprehend and remove criminal immigrants encountered by state and local law enforcement officials purportedly "in the regular performance of their duties."

This close cooperation between INS agents and local law enforcement, though it stops short of legal deputization, has the potential to create a similarly more permissive environment for civil rights violations to take place. Since its inception, the appeal of the MOU to local law enforcement officials has been based on the perception of a shortage of INS agents in the region.[16] Though the QRT program would increase INS responsiveness and diminish the perceived need for INS deputized officers, the threat of a *de facto* "deputized" force still looms on the horizon.

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[14] Walker testified on September 16, 1998.

[15] INS, "INS Enhances Interior Enforcement Strategy; Plans Deployment of New FY 1999 Resources," News Release, 30 March, 1999.

[16] The proposal for the delegation of authority came in the wake of the 1995 fatal stabbing of a man in Haward, Iowa by two men who had been deported from the state two months earlier.

Although local authorities will not be asked by these Quick Response Teams to go beyond the regular performance of their duties, the increased presence of INS agents may provide an additional incentive for law enforcement officers to seek, on their own, undocumented immigrants who have not committed any crime. Police officers would be more likely to use "racial profiling" and unlawfully question the immigration status of individuals if an INS agent was close at hand. The incidents described below are unfortunate precedents for this concern. The establishment of QRTs in several major cities, while making the task of the INS easier, would significantly lower the participation costs of local officers interested in "doing something" about perceived immigration concerns in the community.

Any action taken by the INS which would provide local officers an incentive, or even greater freedom, to pursue undocumented immigrants will undermine public safety and community-based policing efforts. Police and community organizations agree that there is already an especially great fear of law enforcement in immigrant and ethnic minority communities. This distrust is only compounded by the experience of discriminatory police actions -- dragnet operations in which U.S. citizens and legal permanent residents are apprehended because their ethnicity makes them potentially "illegal" in the eyes of the police. A community will be hesitant to report crimes to the police for fear that the police officer might contact an INS agent, concerned about verifying one's immigration status instead of protecting the person from criminals.

IV. COMPROMISING COMMUNITY TRUST IN LAW ENFORCEMENT

A. Recent Incidents

The relationship between police and the communities they patrol is extremely fragile. In some areas, criminals have exploited the fear that immigrant communities have of all law enforcement officials. In Durham, North Carolina, thieves told their victims – in a community of migrant workers and new immigrants – that if they called the police they would be deported. Local police officers have found that people are being robbed multiple times and are not reporting the crimes because of such fear instilled by robbers.[17] These immigrants are left vulnerable to experience crimes of all sorts, not just robbery. An immigrant in New Jersey, Elena Gonzales, was recently found murdered in the basement of her apartment. Friends of the woman say that the suspected murderer, her former boyfriend, threatened to report her to the INS if she did not do what she was told.[18]

Following are incidents in which police have cooperated with INS, only to damage severely their ties to Latino communities:

- **Katy, Texas - May, 1994**

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[17] Amanda Garrett and Deborah Robiglio, "Immigrants Find Abundance of Insecurity," *The News & Observer*, 12 November 1997.

[18] Richard Cowen, "Slain Woman Was 'Vulnerable'," *The Record*, 29 June 1998.

The Police Department and the INS in Katy, Texas conducted a joint operation during which egregious violations of constitutional rights occurred. Vehicles driven by individuals of Hispanic appearance were stopped and detained by Katy Police Department officers and INS agents. The joint operation included searches in homes, trailers, and apartment complexes that were predominantly Latino. "Street sweeps" in which Latinos were the only individuals stopped and questioned regarding their immigration status also were conducted. Katy City Police officers acted outside of their jurisdiction and wrongfully questioned, detained, and arrested individuals based on their immigration status.[19]

- **Jackson, Wyoming - August, 1996**
  Police officers worked with INS agents in a raid in Jackson. Officials openly admitted that immigrants throughout the city were stopped based on the color of their skin.[20] One individual was taken from his bicycle without being asked any questions. Other individuals were taken to jail in a horse trailer. A quarter of the individuals detained were released because they were lawful U.S. residents. The raid worsened the relationship between police and Latinos in the area. Some Latinos do not want to call the police, because they don't want to be interrogated about their citizenship.[21]

- **Crescent City, Florida - January, 1997**
  Putnam County Sheriff's Officers, Crescent City Police, and INS agents conducted a nighttime joint operation purportedly in search of illegal drug activity. Officers set up a highway checkpoint in addition to invading homes, without warrants and without probable cause, in a predominantly Latino neighborhood. Despite the pretextual reasoning that there was suspected illegal drug activity, the police and INS made no drug-related arrests, but managed to frighten an entire neighborhood with dogs and bright lights.

- **Chandler, Arizona - July 1997**
  The most noted incident occurred in Chandler. Local police and INS agents worked very closely in planning this joint operation. Certain areas received multiple searches in the operation, and a number of individuals were stopped in their cars and on the street several times by police and INS. Chandler police acted outside of their jurisdiction and attempted to enforce immigration law. The Arizona Attorney General found that residents were stopped repeatedly "for no other apparent reason than their skin color or Mexican appearance or use of the Spanish language."[22] Despite INS policies to stay off of school campuses and outside of business establishments, individuals were stopped or questioned just outside of businesses and schools. Police patrolling on bicycles harassed and detained Hispanic-appearing individuals in their cars, walking on the street, and sitting in their homes. The Attorney General's report further stated that these numerous stops "violated

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[19] *Cedillo-Perez v. Adams*, No. 94-2461(S.D. Tex. 1994)
[20] Paul Hutchinson, "INS Raid Reveals Resort Town's Labor Woes," *Denver Post*, 23 March 1997
[21] Ibid.
[22] Nadine Wettstein, "Article on Chandler, Arizona and Implications," National Network for Immigrant and Refugee Rights, URL: http://www.nnirr.org, posted 31 Jan. 1998.

the Constitutional rights of American citizens and legal residents to equal protection and to be free from unlawful searches and seizures."[23]

- **Passaic, New Jersey - April, 1998**
  Federal immigration agents, state police, and Passaic County Sheriff's officers conducted a nighttime raid at a recreational park in the city of Passaic, New Jersey. The raid was conducted purportedly to round up gang members wanted on arrest warrants, but police accosted other innocent individuals. Children were commanded to put their hands behind their heads during questioning by police officers. Police officers acted out of their jurisdiction and threatened to hurt a 14-year-old boy if he didn't give the officer his Social Security number. When the boy's father arrived and began to complain about the treatment of his son, another police officer demanded that the father show him his "green card" and driver's license.[24] The city's Mexican American community is fearful and angry about the conduct of the police officers.

- **Roswell, Georgia – April, 1999**
  Signs posted in Spanish read, "It is illegal to pick up or hire workers on private property without the property owner's permission. Violators will be arrested and reported to the Immigration and Naturalization Service and the IRS for possible federal prosecution."[25] Leaders of local community organizations and even the Mexican government have come forward to denounce the Roswell law as discriminatory against Hispanics. The controversy was sparked when an overzealous police lieutenant issued an order to arrest and issue citations in the center of Roswell's growing Hispanic community. Acting on the belief that his chief wanted a crackdown on loitering in the area, the lieutenant intentionally targeted Latinos as the focus of his broad sweep. Although the lieutenant was disciplined and the issue dismissed as an isolated incident, the Hispanic community remains distrustful of the law and the police officers that enforce it.

B. Regaining Community Trust

Perhaps the most alarming example of the need for police departments to reach out to the communities they protect is the case of the 58 deaf and mute Mexican workers who were found living in virtual slavery in New York in July, 1997. Most of these immigrants were tricked into coming to the United States and were subsequently exploited by their smugglers. Forced to live in crowed apartments, the individuals were beaten, raped, traded, and shocked into submission with stun guns. The immigrants feared going to the police because they were undocumented and their smugglers threatened to report them to the INS.[26] The workers were found only after two of them managed to give a written statement about their working and

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[23] Ibid.

[24] Timothy D. May and Justo Bautista, "Critics Blast Passaic Raid," *The Record* 22 April 1998.

[25] Brad Schrade, "Hispanics Oppose Roswell Crowd-Control Effort After Arrests; Mexican Envoy Says Law Regulating Day Laborers Is 'Dangerous For the Latino Community,'" *The Atlanta Journal and Constitution*, 7 April 1999.

[26] David Gonzalez, "Mexicans Looking for Toehold on Crowded Immigrant Ladder," *New York Times*, 28 June 1997.

living conditions to the police.[27] Although neighbors of the deaf Mexicans witnessed some of the abuse going on in the building, they also feared calling the police.[28] The neighbors of the workers seemed unaware that New York City has an ordinance prohibiting police from providing information to the INS about an immigrant who is the victim of a crime. One of these neighbors, who didn't feel that calling the police would do any good, said "We speak with an accent, we can hardly make ourselves understood. They are not going to come here just because we call and complain about something that is happening to one of us."[29]

Earning the trust of communities is essential in creating effective policing efforts. Community-based policing programs which actually reach out to immigrants fare better than those which do not. In fact, it may not be enough for a local police officer merely to abide by an ordinance against cooperation with the INS. The most successful efforts actually involve explicit indication to the community that the police will not report immigrants to the INS. Evidence of this can be seen in a historically crime-ridden neighborhood of Los Angeles where a program called *Los Amigos* decreased the crime rate by 30% in 1997.[30] *Los Amigos* has been effective in the immigrant community because it has provided Spanish-speaking dispatchers to answer calls providing tips or complaints to the police, and the patrolling officers have assured residents that they are not *la migra*.

In another exemplary effort, immigrants in Durham, North Carolina have been successfully urged to join neighborhood watch groups to patrol their own neighborhoods. Bilingual meetings between police officers and community members, along with the police department publicly emphasizing that the department does not have time to patrol for illegal immigrants, have created positive relationships between community members and police.

A similar effort by a community-watch group, *Vecinos Unidos,* in Fort Worth, Texas is also affecting crime rates. The group was created to act as a bilingual neighborhood patrol. Attempts to create such a group in the past had failed because of minority sentiments towards police officers.[31] The successful creation of this group seems to be a sign of the Latino community's greater esteem for the police. Police officers in the area recognize the need for such a program and have welcomed the group.

A scarcity of Spanish-speaking officers in those states where the Latino population has only recently seen rapid growth, however, is often the greatest obstacle to strong community-based policing. Many county police forces consider themselves lucky to have any Spanish-speaking officer in their ranks at all. As Sheriff John Baker of Wake County, North Carolina puts it; "All law enforcement agencies are faced with this. We have 19 positions open and would love to hire a Hispanic or a Spanish-speaking officer . . . but the bottom line is, we just can't find any."[32] Fortunately, the need has been recognized, and some basic language training

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[27] Deborah Sontag, "Deaf Mexicans Are Found Held in Forced Labor," *New York Times*, 20 June 1997.
[28] Mirta Ojito, "Neighbors Did Not Respond to Immigrants' Trouble," *New York Times*, 21 July 1997
[29] Ibid.
[30] Scott Glover, "LAPD Says Outreach Transforming Latino Area," *Los Angeles Times*, 9 November 1997.
[31] Rosanna Ruiz, "A Bilingual Effort In Crime Fighting," *Star-Telegram*, 17 March 1998.
[32] Demorris Lee, "Police Force Hits Barrier of Language," *The News and Observer*, (Raleigh, NC) 14 June 1999.

has been funded so that the local police can better protect and serve the Latino community. Without some kind of dialogue, though, even the first step in trust-building is impossible.

It is not necessary for a city to have an official ordinance mandating non-cooperation for community-based policing to be successful. What is absolutely needed for a successful effort, however, is for residents of a neighborhood to hear explicitly from police officers that they are not the INS, and they have no intentions of turning them, their family members, or their neighbors in to the INS.

V. RECENT COURT DECISIONS

While Latinos have been mobilizing in some neighborhoods to build closer ties to local police, there have been a number of recent court cases which have helped delineate the jurisdiction between police and INS. Two of these cases occurred prior to the passage of IIRIRA in 1996. The remaining two decisions occurred after IIRIRA. However, similar decisions or settlements were reached for all four.

A joint operation between local police and INS agents targeting 16 Hispanic business establishments occurred in Sanger, California in September 1984. During the joint operation, customers in each of these businesses were detained and questioned by the INS. The individuals subjected to this treatment filed a suit and later signed a settlement agreement with the defendants. The agreement outlined that INS agents were not to direct, propose, or request that joint operations with state and local law enforcement officers be carried out when INS agents know that these operations will be beneficial only to the INS.[33]

In 1995, county and city officers in Oakland, California aided the INS in interrogating, searching, and arresting individuals from 18 families of Mexican descent in St. Helena. The homes of these families were searched without search or arrest warrants. A resulting settlement provided that county sheriff's deputies and local police officers would be barred from conducting raids with the purpose of searching for undocumented immigrants. The agreement also prohibited the city from requesting or disseminating information regarding the immigration status of any individual unless authorized to do so by state or federal statute or court order. The settlement further instructed officers to become more informed about conduct and procedures when acting jointly with INS officers.[34]

In Ohio, in 1997, a federal district court judge ruled in favor of a preliminary injunction to bar state highway patrol officers from questioning motorists about their immigration status and seizing immigration papers. In what may become a multi-plaintiff class action, the lawsuit arose after Ohio State Highway Patrol had stopped, searched, and detained two Hispanic migrant workers. The judge prohibited the State Highway Patrol from

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[33] *Velasquez v. Ackerman*, No. C-84-20723-JW (D. Cal. 1992)
[34] *De Haro v. City of St. Helena*, No. C-93-3487 (D. Cal. 1995)

questioning motorists about their immigration status and seizing immigration papers without justification.[35]

Another settlement was reached in February 1998, in Farmersville, California. In November 1992, U.S. Border Patrol agents and Farmersville police officers searched the private residences of suspected undocumented immigrants during a predawn raid. Fifteen farmworker families filed suit against the United States and the City of Farmersville. The settlement agreement outlined specific procedures that the police of Farmersville are to undertake when cooperating with INS agents. It further prohibited the defendants in the case from requesting or disseminating information about an individual's immigration status.[36]

Both the Oakland and Farmersville cases contained an order prohibiting the defendants in the case from requesting or disseminating information about an individual's immigration status. Neither agreement in Oakland or Farmersville, though, enforces compliance with the terms of the settlement. In light of Section 642, it is unclear how these court-ordered agreements would be enforced.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Deputization

After examining the current law and recent court decisions, the difference between police officers' jurisdiction and that of immigration agents becomes clear. However, these boundaries are often crossed as is evident in cities such as Chandler, Arizona and Katy, Texas. The erosion of clear lines between local and federal jurisdiction will probably continue to impair the ability of the federal government to guarantee the rights of U.S. citizens and immigrants.

- **The Department of Justice should not allow its duty to enforce immigration laws to overshadow its responsibility to enforce civil rights.** Certainly, the federal government has the authority and right to ensure that the nation's immigration laws not be violated. The methods by which this authority is implemented, however, should not be allowed to undermine the public safety and civil rights of the residents of the United States. Delegation of immigration powers to local law enforcement will certainly create more problems than it purports to solve for a substantial portion of the American people.

- **There should be no delegation of federal immigration authority to local police**. Instead, INS should be given the resources to hire sufficient federal agents to respond adequately and efficiently to police requests for assistance in determining the immigration status of criminals *already in police custody for criminal offenses*. Any delegation to local law enforcement of the power to interrogate, determine status, detain, and transport suspected

[35] *Farm Labor Organizing Committee v. Ohio State Highway Patrol*, No. 3:96CV7580 (D. Ohio December 9, 1997) (order granting preliminary injunction)

[36] *Mendoza v. City of Farmersville*, No. CV-F-93-5789 (D. Cal. 1998)

undocumented immigrants for immigration enforcement purposes will lead to violations of the civil rights of United States citizens and lawful permanent residents who appear to be foreign-born. The Department of Justice lacks the resources to prosecute the current level of civil rights violations. Delegation will only increase the likelihood of improper police activity, without a concurrent increase in resources for civil rights enforcement.

- **Genuine community-based policing is a better solution to crime committed by undocumented immigrants.** There have been positive, concrete results in areas where police have enlisted the immigrant community in local law enforcement efforts. In Durham, North Carolina and in Fort Worth, Texas, local authorities have successfully begun to break through the immigrants' reluctance to have contact by encouraging immigrants to form neighborhood watch organizations. After a local LAPD officer in Van Nuys, California began holding bilingual community meetings, the crime rate dropped 30% over one year. The most important component of this outreach is an assurance that the police will not harass individuals about their immigration status. *Even U.S. citizens and lawfully-present immigrants will cease to cooperate with police if they sense that the police are viewing them with suspicion because of their ethnicity, or the language they speak.*

Largely due to the opposition efforts of local and national organizations, the push for delegation of authority has been considerably weakened since its defeat in Salt Lake City last year. Although there has been talk of testing the INS program in Marshalltown, Iowa, and more recent reports of interest within the Arkansas state legislature, the MOU strategy seems to have fallen considerably on the agency's priority list.

B. "Quick Response Teams"

With the advent of 45 Quick Response Teams in 11 states, the issues of concern will not involve the cross-deputization of local police to fulfill INS duties so much as the uncertain role a strengthened INS will play within the community. The following, more general, recommendations are intended for consideration wherever the INS intends to extend its influence through some form of coordination with local law enforcement forces:

- **Community input must be inclusive of all segments of the population.** Before the INS enters into any new region, some assessment must be made to ascertain what functions the new force will serve. This kind of evaluation should be conducted by means of a community forum, one in which all sectors can be heard through their own self-appointed, representative organizations. It is especially crucial that the Latino community be included in these talks from the very beginning to avoid expressly anti-immigrant policy-making.

- **Clear lines of jurisdiction between INS and police must be drawn and enforced.** A separation between the INS and local law enforcement must be maintained if community-based policing is to be effective.

- **Police and INS activities must be transparent to the community.** In order to curb the practice of illegal searches and seizures by local law enforcement, comprehensive reporting of the reasons and circumstances for detainment are necessary to assure that police are not taking any extra-legal actions. To promote effective community-based policing, local law enforcement agencies should make a priority of emphasizing their independence from the INS.

- **The INS should establish an improved mechanism to address complaints about abuse of authority in the enforcement of federal immigration laws.** The federal government has the authority and right to ensure that the nation's immigration laws are not violated. A body, such as a "civilian review panel," with the ability and resources to accept and investigate complaints of federal law enforcement abuse and to make recommendations for remedial actions, should be established to help ensure government accountability and deter further violations of rights. Such a panel can be a step forward in addressing the ever-increasing number of complaints filed against immigration enforcement agents.

- **Victims of abuse and harassment should have access to legal recourse.** In the immediate term, it is likely that a strengthened INS presence will increase the number of civil rights violations in the affected region. This is especially important with the upcoming deployment of INS agents in rural Midwestern and Southeastern States, where the Latino community has extremely limited access to legal services and political power. In these places, the civil rights infrastructure must be adapted to better protect the immigrant community. This should include restoration of federal funding for legal services as well as lifting the immigrant restrictions from the Legal Services Corporation.

- **Civil Rights must be enforced.** The Department of Justice must play a greater role to protect the civil rights of Latinos and other ethnic minorities who get caught up in immigration enforcement operations. Since closer contact between the INS and local law enforcement agencies is sure to engender more incidents like the ones described above, greater emphasis must be placed on the protection of civil rights and enforcement against violators by both Congress and the Administration.